

**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

**FILE:** B-219979 **DATE:** August 23, 1985  
**MATTER OF:** D.A. Elia Construction Corp.

**DIGEST:**

Although solicitation contained a provision requiring the listing in the bid of contractor qualifications, contracting agency could properly consider bids which failed to provide qualifications statement at bid opening, since purpose of provision is to elicit responsibility information.

D.A. Elia Construction Corp. (Elia) protests the Veterans Administration's (VA) consideration of any bids, other than Elia's bid, for project No. 514-068, renovation of building 78, VA Medical Center, Bath, New York. Elia contends that the five other bids are nonresponsive because they lack a solicitation-required asbestos abatement contractor qualification statement.

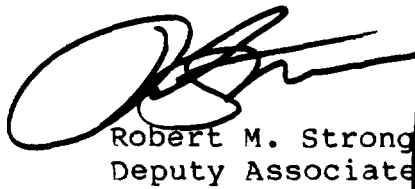
Elia initially protested to VA contending that lack of the statement at bid opening was a material defect which VA could not waive as a minor irregularity or informality. In support of its contention, Elia noted that: (1) the solicitation required the statement's submission with the bid; (2) absence of the statement impairs the government's ability to determine responsibility; and (3) bidders submitting the statement were precluded from bid shopping and therefore prejudiced if the government considered the bids of bidders who elected not to submit statements, since those bidders would be free to bid shop after bid opening. VA denied the protest citing Devcon Systems Corp., B-197935, July 18, 1980, 80-2 C.P.D. ¶ 46, which held that, notwithstanding a solicitation requirement for submission of a subcontracting plan with the bid, where the solicitation does not state that failure to submit the plan will result in the bid's rejection as nonresponsive, the matter relates to responsibility and not to responsiveness and, therefore, the plan may be provided subsequent to bid opening.

We agree with VA's position and dismiss the protest for failure to state a valid basis for protest. 4 C.F.R. § 21.3(f) (1985).

In its protest to our Office, Elia has repeated its contentions before VA and added the argument that:

" . . . The federal government has the ability . . . to make the demonstration of bidder responsibility on the face of bid documents a matter of bid responsiveness. This is especially important when the work to be performed is unusual or dangerous in nature."

The provision requiring the statement is clearly labeled "QUALIFICATIONS." In order to establish a basis for the contracting officer's approval of the proposed asbestos abatement contractor, it seeks information concerning the contractor's ownership, history, knowledge of environmental regulations and personnel. Elia seeks to characterize the provision as an anti-bid-shopping, subcontractor listing requirement which would make compliance with its terms a matter of responsiveness. 44 Comp. Gen. 526 (1965); 43 Comp. Gen. 206 (1963). We disagree. The only thing that the provisions has in common with a listing requirement is that both require the bidder to name the entity which will perform the work, if other than the bidder. The similarity ends there, since the purpose of the provision is to elicit responsibility information, while the purpose of the listing requirement is to lock the bidder into a particular subcontractor for a specific category of work at the time of bid opening. Id.



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